IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-1818

FREDERICK P. ADAMS, *Appellant*

v.

HARRIS COUNTY, TEXAS, *Appellee*

On Appeal From The Court Of Civil Appeals For The Fourteenth Supreme Judicial District of Texas

JURISDICTIONAL STATEMENT

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SUBJECT INDEX

	Page
Opinion Below	2
Jurisdiction	2
Question Presented	2
Statutes Involved	3
Statement	3
The Questions are Substantial	5
I. The decision of *Paul v. Davis* makes this appeal an important one.	5
II. The doctrine of sovereign immunity is not applied with any uniformity.	7
III. This is a case of first impression.	15
IV. Stare decisis is no bar to the adjudication of this issue.	16
Conclusion	18
Appendix A (Opinion of the Court of Civil Appeals, 14th Supreme Judicial District of Texas, dated 10-29-75)	21
Appendix B (Application for Error, Refused, No Reversible error, of the Texas Supreme Court, dated 3-24-76)	26
Appendix C (Tex. Rev. Civ. Stat. Ann. Art. 6252-19)	28
Appendix D (Muskopf v. Corning Hospital District, 359 P.2d 457 (Cal. 1961)	39
Certificate of Service	42

LIST OF AUTHORITIES

CASES

	Page
American Ry. Express Co. v. Levee, 263 U.S. 19 (1923)	2
Ayala v. Philadelphia Board of Public Education, 305 A.2d 877 (Pa. 1973)	9, 19
Barbier v. Connolly, 113 U.S. 27 (1885)	14
Boddie v. Connecticut, 401 U.S. 371 (1971)	9, 14
Citizens' Bank of Louisiana v. Parker, 192 U.S. 73 (1904)	2
Gomez v. Perez, 409 U.S. 535 (1973)	11, 16
Dandridge v. Williams, 397 U.S. 471 (1970)	13

CASES — Page

Levy v. Louisiana, 391 U.S. 68 (1968) 14
Metlakatla Indian Community Annette, Island Reserve v. Egan, 363 U.S. 555 (1960) 2
Memorial Hospital v. Maricopia County, 415 U.S. 250 (1974) 14
Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954) 2
Molitor v. Kaneland Community Unit District No. 302, 163 N.E.2d 89 (Ill. 1959) 9
Mower v. The Inhabitants of Leicester, 9 Mass. 247 (1812) 17
Muskopf v. Corning Hospital District, 359 P.2d 457 (Cal. 1961) 16
Paul v. Davis, 96 S.Ct. 1155 (1976) 5, 6
Reed v. Reed, 404 U.S. 71 (1971) 11, 15
Russell v. Men of Devon, 100 Eng. Rep. 359 (1788) ....15, 17 ,18
Shapiro v. Thompson, 394 U.S. 618 (1969) 12, 13, 14, 15
Stanley v. Illinois, 405 U.S. 645 (1972) 11, 15
Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972) 14

UNITED STATES CONSTITUTION

Fourteenth Amendment 5, 6, 8, 9, 11, 12, 13,19

UNITED STATES STATUTES

28 U.S.C., Section 1257(2) 2
42 U.S.C., Section 1983 ..... 5, 6

TEXAS STATUTES

Tex. Rev. Civ. Stat. Ann. art. 6252-19 3

TEXTS

57 Am. Jur. 2d Municipal, School and State Tort Liability, § 27 *et seq.* (1971) 7
Restatement of Torts, 2d, § 895a 15

MISCELLANEOUS

Cardozo, Selected Writings of Benjamin Nathan Cardozo, 107 (1947) 20

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JURISDICTIONAL STATEMENT

Appellants appeal from the Judgment of the Court of Civil Appeals for the Fourteenth Supreme Judicial District of Texas, entered on October 29, 1975, and application for error, refused, no reversible error, by the Texas Supreme Court on February 25, 1976, following which a motion for rehearing was denied on March 24, 1976. Appellant submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Court of Civil Appeals, Fourteenth Supreme Judicial District of Texas, is reported in 530 S.W.2d 606. A copy of the opinion is attached as Appendix A. A copy of the Texas Supreme Court's refusal to grant appellant's application for writ of error, and the overruling of the motion for rehearing, is attached as Appendix B.

JURISDICTION

This suit was initiated in the Texas state courts to recover for personal injuries to Appellant. The trial court granted a summary judgment in favor of Appellee Harris County, which was affirmed by the Court of Civil Appeals, and application for writ of error was refused by the Texas Supreme Court. The jurisdiction of the United States Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *Citizens' Bank of Louisiana v. Parker*, 192 U.S. 73 (1904); *American Ry. Express Co. v. Levee*, 263 U.S. 19 (1923); *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157 (1954); *Metlakatla Indian Community Annette, Island Reserve v. Egan*, 363 U.S. 555 (1960).

QUESTION PRESENTED

When the state or any of its political subdivisions act in a proprietary capacity, as opposed to acting in a governmental capacity, the state or the political subdivisions should incur the same duties and liabilities of municipalities or of private enterprise. Sovereign immunity should

not shield the state from liability arising from tortious acts committed by its employees in a proprietary capacity.

When the State creates or provides a remedy for the redress of wrongs, the state cannot arbitrarily exclude a class of claimants merely because the tort-feasors' employer is an immune public entity.

When a person is precluded from suing an immune public entity for a tort, the injured party's rights to equal protection and procedural due process are violated because of the taking of life, liberty, and property without just compensation.

STATUTES INVOLVED

The doctrine of sovereign immunity and Article 6252-19 (1970) of the Texas Revised Civil Statutes, set forth in Appendix C.

STATEMENT

On Easter Sunday, March 26, 1967, Fred Adams, the Appellant, was riding his motorcycle on a public highway which crossed Cedar Bayou.[1] The bridge was equipped

1. Three years later and largely due to Frederick P. Adams, the Texas Legislature passed the Texas Tort Claims Act. Tex. Rev. Civ. Stat. Ann. art. 6252-19 (1970). Section 3 of the Act purports to waive all governmental immunity, subject to the exceptions contained in Section 14, and limits the recovery to $100,000 per person, $300,000 for a single occurrence, and $10,000 for any damage to property. Section 14 of the Act, titled "Exemptions," lists twelve exemptions which effectively restore a great deal of governmental immunity. The first exemption is stated as "Any claim based upon an act or omission which occurred prior to the effective date of this Act." The effective date of the Act was January 1, 1970.

Appellant's action could have been maintained under the Texas Torts Claim Act if it had accrued after January of 1970. Appellant, therefore, limits his constitutional attack on the Act to (1) its prospective application, and (2) the limitation of a recovery to $100,000 per person.

with a draw section, which was mechanically raised and lowered to permit the passage of vessels plying the stream. As Adams approached the draw, a relatively small pleasure boat was also approaching. Without any indication from the vessel that it was necessary to do so, the bridge keeper, a Harris County employee, caused the bridge to begin to open. At that instant, when Appellant began to cross the bridge, the barricade lowered into place and struck the motorcycle. Appellant was thrown several feet into the air and fell either on the bridge or close by. Appellant is now a quadraplegic.

Appellant brought an action in Harris County district court for personal injuries. The trial court granted a summary judgment for Harris County on the motion of the county that it was immune from suit and liability. Appellant appealed to the Court of Civil Appeals for the Fourteenth Supreme Judicial District of Texas and urged the point of error that the granting of the summary judgment was in violation of the Appellant's rights granted under the Fourteenth Amendment to the United States Constitution. (Appellant's brief to the Court of Civil Appeals, Point Three). This point, along with others, was overruled and the Judgment of the trial court affirmed:

> "Appellant's final contention is that the rule of sovereign immunity should be discarded by the Texas courts. . . This court has refused to do so in the past; such a sweeping and fundamental change should be made, if at all, by the supreme court or the legislature." 530 S.W.2d 609.

Appellant in his application for writ of error to the Texas Supreme Court again raised and argued, by assignment of error, that the doctrine of sovereign immunity

violated his rights under the Fourteenth Amendment to the United States Constitution. (Point of Error Number Three in Appellant's Application for Writ of Error.) The Texas Supreme Court refused to grant the application for writ of error and later refused his motion for rehearing. Therefore, the Texas courts have held the doctrine of sovereign immunity valid in the face of a challenge that it violates the Fourteenth Amendment to the United States Constitution.

THE QUESTIONS ARE SUBSTANTIAL

This case presents substantial federal questions.

I.

The recent decision of *Paul v. Davis,* 96 S.Ct. 1155 (1976) makes the present appeal an extremely important one.

In the majority opinion the Court held that Section 1983 of 42 U.S.C., a statute enacted to enforce the provisions of the Fourteenth Amendment against public officials acting in their official capacity, did not protect a party from actionable wrongs of police officials which resulted in a loss of good reputation. The question presented by Appellant in this appeal is whether the Fourteenth Amendment to the United States Constitution will protect a citizen from actionable wrongs of state employees when the result is a loss of life, liberty, and property. If a claimant has no civil rights action under Section 1983 for the tort of a state employee, surely the claimant has a direct remedy in the state courts for the wrong. The *Paul v. Davis* opinion suggests that Mr. Davis' remedy was an action for defamation in the state

court. This Appellant is asking the Supreme Court of the United States for the very relief it proposed to Mr. Davis: Appellant should be able to sue in the state courts for the actionable wrongs of county employees which resulted in a loss of life, liberty, and property.

Paul v. Davis mandates that this court decides the issue of sovereign immunity. The majority based its opinion to some extent on the potential existence of a state remedy, without, however, making any inquiry whether the police officials would have been immunized by state doctrines of official or sovereign immunity. *Paul v. Davis* has left this issue squarely at the Supreme Court's door: will sovereign immunity continue to be a viable defense to torts committed by state officials when the state is acting in a *proprietary capacity?*

In *Paul v. Davis* the Court agreed that Mr. Davis' reputation was damaged but held that reputation did not fall within the ambit of life, liberty, or property. In this case, Appellant, a quadrepalegic, was deprived of all three: the quality of his life was dramatically reduced; his liberty is restricted; and, his ability to earn a living was rendered non-existent. Even though the Court found "reputation" too nebulous a right to invoke protections of procedural due process, surely it will recognize the rights a person has in his physical integrity, the right to choose a type of lifestyle, the right to be independent of others, the right to be capable of maintaining and caring for oneself, and ultimately the right to be free to make a living and acquire property, all of which are rights that are protected by the Fourteenth Amendment to the United States Constitution. The majority opinion admitted this when it stated:

> "And since it is surely far more clear from the language of the Fourteenth Amendment that 'life' is protected against state deprivation than it is that reputation is protected against state injury, it would be difficult to see why the survivors of an innocent bystander mistakenly shot by a policeman or negligently killed by a Sheriff driving a government vehicle, would not have claims equally cognizable under 1983." 96 S.Ct. at 1159.

The innocent bystander's action, if not cognizable under Section 1983, must be maintainable in state court, and that right protected by procedural due process.

II.

The doctrine of sovereign immunity was never applied in any rational method: in most states cities were liable for torts of their employees when committed in a proprietary function while counties were not. 57 Am. Jur. 2d Municipal, School and State Tort Liability, § 27 *et. seq.* (1971). This distinction between city and county governments is not a rational one — the city of Houston, seat of Harris County, has a larger population and three times the number of employees as Harris County, and the city actually overlaps into two other counties. If the city can answer in damages for the torts of its numerous employees, there is no reason the county should not.

Many of the activities that give rise to tort liability are common to both governmental units. The operation of draw bridges is an example. It was fortuitous that Appellant was injured on a county draw bridge and not one of the two drawbridges owned and operated by the city of Houston. From the perspective of the injured party, or from the point of view of ability to pay or insure against

liability for negligent operation, there is no rational basis for allowing an injured party to recover against the city and prohibiting a similar suit against the state or county.

The doctrine of sovereign immunity violates the equal protection clause of the Fourteenth Amendment because it establishes two categories of claimants, those injured by actions of immune public entities and those injured by private or non-immune public entities. The distinction between persons injured by a private entity and persons injured by a state agency when the state is acting in a proprietary capacity has no basis and is arbitrary and capricious. If one agrees with the premise that a person does not choose to be the victim of another's negligence, it follows that a person does not choose his tort-feasor nor does a person choose the status of his tort-feasor (employee of private entity versus employee of immune public entity). The unreasonableness of the classification created by sovereign immunity is that the plaintiff injured by a private defendant has access to the courts and some hope of redress. The complainant injured by an employee of an immune state agency acting in a proprietary capacity has no access to the courts and no hope for being compensated for his injuries. He must bear the cost of his own injuries. It is difficult to understand any reason for classifying those wronged by the torts of an individual or private entity separately from those wronged by the torts committed by the state when the state is acting outside its governmental capacity. The classification that denies a cause of action to a certain class of plaintiffs based on the tort-feasor's employer (e.g., public v. private) is invidious and is not a reasonable classification.

The Fourteenth Amendment of the United States Constitution is violated by the arbitrary denial of access to the

courts to those who are injured by an immune public entity. Due process under the law guarantees the individual the right to redress of grievances by the courts. *Boddie v. Connecticut,* 401 U.S. 371 (1971). When the state invokes the doctrine of sovereign immunity and thereby denies the individual even a right to an adjudication of a tort claim in the courts of the state, then that individual has no opportunity to have a court of law determine if he was, in fact, wronged. The state has no legitimate or compelling reason for denying access to the courts to those individuals damaged by the actions of an immune public entity as opposed to a non-immune public entity or a private individual.

Under federal equal protection provisions, a state may single out a class for a distinctive treatment only if such classification bears a rational relationship to the purposes of the state's obligations to its citizenry, from whom it realizes and acquires its only power.[2] The Fourteenth

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2. Perhaps it has been this fallacious concept that the state is paramount to its constituency that is actuating state court jurists and text writers to so bitterly attack this ancient rule. Some of the critical language is picturesque and quite descriptive. In *Molitor v. Kaneland Community Unit District No. 302,* 163 N.E.2d 89, 94 (Ill. 1959) the court stated:

> "Professor Borchard has said that how immunity ever came to be applied in the United States of America is one of the mysteries of legal evolution. (Borchard, Governmental Liability in Tort, 34 Yale L.J. 1, 6.) And how it was then infiltrated into the law controlling the liability of local governmental units has been described as one of the amazing chapters of American common-law jurisprudence. (Green, Freedom of Litigation, 38 Ill.L.Rev. 355, 356.) 'It seems however, a prostitution of the concept of sovereign immunity to extend its scope in this way, for no one could seriously contend that local governmental units possess sovereign powers themselves.' 54 Harv.L.Rev. 438, 439."

See also the language of the Supreme Court of Pennsylvania in *Ayala v. Philadelphia Board of Public Education,* 305 A.2d 877, 881 (Pa. 1973):

Amendment to the United States Constitution mandates that no state may deny to any persons within its jurisdiction the equal protection of the laws. The principle of equal protection does not preclude the state from drawing distinctions between different groups as individuals, but it does require that, at a minimum, persons similarly situated with respect to the legitimate purposes of the law receive like treatment.

In recent years the United States Supreme Court has had occasion to review under the federal equal protection

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"Today we conclude that no reasons whatsoever exist for continuing to adhere to the doctrine of governmental immunity. Whatever may have been the basis for the inception of the doctrine, it is clear that no public policy considerations presently justify its retention.

Governmental immunity can no longer be justified on 'an amorphous mass of cumbrous language about sovereignty. . . .' Leflar and Kantrowitz, Tort Liability of the States, 29 N.Y.U. L. Rev. 1363, 1364 (1954). As one court has stated:

'. . . it is almost incredible that in this modern age of comparative sociological enlightenment, and in a republic, the medieval absolutism supposed to be implicit in the maxim "the King can do no wrong," should exempt the various branches of the government from liability for their torts, and that the entire burden of damage resulting from the wrongful acts of the government should be imposed upon the single individual who suffers the injury, rather than distributed among the entire community constituting the government, where it could be borne without hardship upon any individual, and where it justly belongs.' *Barker v. City of Santa Fe*, 47 N.M. 85, 136 P.2d 480, 482. Likewise, we agree with the Supreme Court of Florida that in preserving the sovereign immunity theory, courts have overlooked the fact that the Revolutionary War was fought to abolish that 'divine right of kings' on which the theory is based."

* * *

Moreover, we are unwilling to perpetuate the notion that "it it better that an individual should sustain an injury than the public should suffer an inconvenience." *Russell v. Men of Devon, supra* at 673."

clause a number of state schemes which deprived a designated class of persons a cause of action ostensibly to promote a legitimate state interest. In *Gomez v. Perez*, 409 U.S. 535 (1973), the Supreme Court examined a Texas statutory scheme which defined a natural father's duty to support his legitimate children. Thus, illegitimate children, unlike legitimate children, had no legal right of support from their fathers. The Court held that once the state gave a judicially enforceable right to legitimate children, that there was no constitutionally sufficient justification for denying the same right to a child whose natural father had not married its mother. Therefore, the equal protection clause gave the same right of action to the illegitimate children that legitimate children had under the Texas statutory scheme.

In *Stanley v. Illinois*, 405 U.S. 645 (1972), the petitioner, an unwed father, argued that the statutory scheme that the children of unmarried fathers upon the death of the mother were to be declared dependents without any hearing on paternal fitness and without proof of neglect, violated his rights under the Fourteenth Amendment to the United States Constitution. The Court held that under the due process clause in the Fourteenth Amendment the petitioner was entitled to a hearing on his fitness as a parent, and that the state could not, consistent with due process requirements, merely presume that unmarried fathers in general were unsuitable and neglectful parents.

In *Reed v. Reed*, 404 U.S. 71 (1971), a mandatory provision of the Idaho Probate Code that gave precedence to men over women when persons of the same entitlement class applied for appointment as administrator of a decedent's estate violated the equal protection clause of the

Fourteenth Amendment. *Reed* involved the death of a minor adopted child whose parents had separated sometime prior to its death. Both parents filed petitions to be appointed administrator of the decedent's estate, and after a hearing on the two petitions the Probate Court ordered Letters of Administration to be issued to the father, ruling that the Appellee being a male was to be preferred to the female Appellant by reason of §15-314 of the Idaho Code. The Court reversed the Idaho Supreme Court which had upheld the Probate Court's appointment. The Supreme Court stated:

> "The classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that *all persons similarly circumstanced* shall be treated alike . . . By providing dissimilar treatment for men and women who are thus similarly situated, the challenged section violates the equal protection clause." 404 U.S. at 76. (Emphasis added.)

The court held that the objective of reducing the workload of probate courts by eliminating one class of contest was not without some legitimacy but that section of the Idaho Code did not advance that objective in a manner consistent with the demands of the equal protection clause.

In *Shapiro v. Thompson,* 394 U.S. 618 (1969), the Court held that a statutory prohibition of welfare benefits to residents of less than a year created a classification which constituted an invidious discrimination denying them equal protection of the laws. The Court stated:

> "There is no dispute that the effect of the waiting period requirement in each case is to create two

> classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction. On the basis of this sole difference the first class is granted and the second class is denied welfare aid . . ." 394 U.S. at 627.

Shapiro applied a stricter standard of whether the one-year residency requirement promoted state interest because a *fundamental* right of interstate movement was involved. The burden then on the state was to show that the one-year residency requirement promoted a "compelling" state interest. 394 U.S. at 638. The Court rejected appellant's argument that a mere showing of rational relationship between the waiting period and the admittedly permissible state objectives would suffice to justify the classification.

The Supreme Court has established two tests for determining whether legislative classification violated the equal protection clause. First, although a state is permitted considerable latitude to classify people within its jurisdiction, the classification must bear at least a reasonable relation to the purpose of the legislation. *Dandridge v. Williams,* 397 U.S. 471 (1970). Second, if the classification is either based on suspect criterion, such as race, or affects a fundamental right, a stricter test is applied: there must be a "compelling state interest" for creating the classification. *Shapiro v. Thompson,* 394 U.S. 618, 634 (1969).

Sovereign immunity can be viewed two ways. From the perspective of the immune state it is a means of avoiding the economic hardships of paying for the negligent actions of its agents. The Supreme Court, however, has held that when a statute is under a Fourteenth Amendment challenge because it draws an alleged invidious distinction

between classes of citizens, the conservation of the tax payers' purse is not a sufficient state interest to successfully ward off such an attack. *Memorial Hospital v. Maricopia County,* 415 U.S. 250, 263 (1974). See also *Shapiro v. Thompson,* 394 U.S. 618 (1969).

From the perspective of the injured Plaintiff, sovereign immunity prevents individuals injured by immune public entities from an adjudication of their tort claim. If there is generally a constitutional right to access to the courts for the redress of wrongs, *Barbier v. Connolly,* 113 U.S. 27 (1885); *Boddie v. Connecticut,* 401 U.S. 371 (1971), the state cannot arbitrarily deny a class of claimants that right. *Weber v. Aetna Casualty & Surety Co.,* 406 U.S. 164 (1972); *Levy v. Louisiana,* 391 U.S. 68, 72 (1968). In fact, if access to the courts is a fundamental right, the state must come forward with a "compelling" reason for the distinction between those who can sue and those who cannot.

If there was ever any rational basis for sovereign immunity, and if it were ever originally justifiable, it can no longer be constitutionally justified. Some of the substantive arguments which have been advanced in favor of sovereign immunity are the absurdities of a wrong being committed by the entire people; the idea that whatever the state did must be lawful; the dubious theory that any agent of the state was always outside of his authority when he committed any wrongful act;[3] reluctance to divert

3. Most American authorities have bottomed the anachronism on this ground: namely, respondeat superior should not be extended to the sovereign. Thus, many states have embraced the "exceptions" generally applied to other of the "immunities" particularly those relating to the direct neglect of the unit of government itself, such as inadequate equipment or the selection of incompetent help. Texas has even proscribed direct negligence. Incidentally, there are pleadings and evidence that is indicative of direct negligence here.

public funds to compensate private injuries; and the inconvenience and embarrassment which would descend upon the state government if it should be subject to such litigation. See the Restatement of Torts, 2d, § 895a.

In view of the adoption of the Texas Tort Claims Act none of those reasons are now entitled to any consideration. The only reason that possibly can be advanced for the numerous exemptions from the Texas Tort Claims Act is that the state is still not willing to bear the responsibility for negligent acts committed by employees and agents of the state. The theory advanced by *Russell v. Men of Devon,* 100 Eng. Rep. 359 (1788) that "It is better that an individual should sustain an injury than the public should be inconvenienced," must still be a viable theory.

III.

This is a case of first impression. All cases dealing with the right to equal protection and due process have been brought on grounds that the litigant's status differed in some particular from that of other persons similarly situated. The allegation is always that the classification resulting from the difference bears no rational relationship to permissible state objectives. Appellant has not been able to find a case in which the wrong-doer's status imposed a classification on the victim. In *Stanley v. Illinois,* 405 U.S. 645 (1972) the petitioner's status was at issue — he was an unwed father. In *Reed v. Reed,* 404 U.S. 71 (1971) the status created by statute preferred male over female. In *Shapiro v. Thompson,* 394 U.S. 618 (1967) the classification created a distinction between welfare recipients who resided in the state less than

one year to those who had resided there more than one year.

The case that comes the closest to the present one, a case which to some degree created a status based on the "wrongdoer's" act, is *Gomez v. Perez*, 409 U.S. 535 (1973). In that case the "wrongdoers" were the unmarried parents of the illegitimate child. The effect of the decision was that the status of the wrongdoer (unmarried) was not to be imposed on their offspring so as to deny the equal protection and due process of the law:

> "We therefore hold that once a state posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constituionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother." 409 U.S. at 538.

Appellant urges this Court to find that the status of the tort-feasor's *employer* cannot determine Appellant's right to access to the courts. If victims of negligent actions of others generally have a right to sue, the state cannot, consistent with equal protection and due process, deny that right to a class of claimants whose classification was created by the status of the tort-feasor's *employer*.

IV.

Stare decisis is no bar to the adjudication of this issue. Sovereign governmental immunity purportedly began with the personal prerogatives of the king of England on the theory that "the king can do no wrong."[4] However, the

4. For a thorough history of the development see Appendix D, taken from Chief Justice Traynor's decision in *Muskopf v. Corning Hospital District*, 359 P.2d 457, 458, n.1 (Cal. 1961).

first case involving immunity, *Russell v. Men of Devon*, 100 Eng. Rep. 359 (1788), made no mention of the king's immunity from suit. The case involved a man who was injured on a county bridge and brought suit against the county, vis-a-vis the male inhabitants. Lord Kenyon, chief justice, stated a number of reasons for refusing to allow the suit:

1. The county was not a suable entity;
2. To allow the county to be sued as a corporation would impinge upon the Crown's right to create corporations;
3. Inhabitants of the county fluctuated and a judgment against them would be difficult to enforce;
4. Even if all the other reasons failed, there was no fund to satisfy a judgment.

Justice Ashurst, in a concurring opinion, stated:

> "But it has been said that there is a principle of law on which this action might be maintained, namely, that where an individual sustains an injury by neglect or default of another, the law gives him a remedy. But there is another general principle of law which is more applicable to this case, that it is better that an individual should sustain an injury than the public should suffer an inconvenience." 100 Eng. Rep. at 362.

Therefore, the first case of sovereign immunity stated as one of its bases a theory that is directly in opposition to today's public policy of spreading the risk.

The first American case on governmental immunity was *Mower v. The Inhabitants of Leicester*, 9 Mass. 247 (1812), and oddly enough, is another case involving a defective bridge. In the *Mower* case there was a statute

that required the city to maintain the bridge and provided liability for double damages in the case of neglect and subsequent injury. 9 Mass. at 255. None of the reasons given in *Russell* applied: the Town of Leicester was a corporation capable of being sued, it had a treasury out of which a judgment could have been satisfied, and liability was created by statute. Ignoring the difference, the Massachusetts court adopted the rule of the *Russell* case, which became the general American rule. It is interesting that the reporter footnoted the *Mower* opinion with the comment:

> "(a) . . . (I)t is not very obvious how this decision can have any other tendency than to show, on principle, the action may be maintained here. ED.) 9 Mass. at 249.

If the reason of *Russell* and the rule of county immunity ever had any substance they have none today. Public convenience does not outweigh individual compensation. As stated by the Supreme Court of Pennsylvania, paraphrasing the Supreme Court of Florida, "[I]n preserving the sovereign immunity theory, courts have overlooked the fact that the Revolutionary War was fought to abolish that 'divine right of kings' on which the theory is based." Ayala v. Philadelphia Board of Education, 305 A.2d 877, 881 (Pa. 1973).

CONCLUSION

The application of the doctrine of sovereign immunity to preclude a class of claimants their rights to litigate their cause of action based on the status of the tortfeasor's employer, unconstitutionally discriminates against the victims of state acts of negligence in violation of the

equal protection provision of the United States Constitution. It infringes upon one of the most fundamental progenitors of due process of law, through which all other legal rights may be enforced — access to the courts.

The ability to seek redress in the courts is a fundamental right guaranteed by the due process provision of the Fourteenth Amendment to the United States Constitution and any restrictions of such right requires a close scrutiny by the judiciary. The classification that denies victims of certain public entities this fundamental right draws a line that is repugnant to our traditional democratic concept of governmental responsibility to the public. Because of the importance of the right involved and the suspect nature of a state's classification abrogating this right, the usual presumption of constitutionality should be reversed: the state must justify the making of the distinction. If the state cannot present a compelling reason for the classification, then the classification should be characterized as invidious and capricious and held to violate the Fourteenth Amendment to the United States Constitution.

It is submitted that the decision of the Court of Civil Appeals, Fourteenth Supreme Judicial District of Texas, is in conflict with the United States Constitution. Discrimination by legally disenfranchizing a group (victims of immune public entities) is in derogation of the right of due process of the law because it impedes equal access to the courts.

The doctrine of sovereign immunity is an exception to the fundamental tort concept that liability follows tortious conduct. Appellant is not aware of any reasons for the continuation of this exception. ". . . (W)hen a rule, after

it has been tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal to full abandonment." Cardozo, *Selected Writings of Benjamin Nathan Cardozo,* 107, 152 (1947).

For all the reasons stated here, Appellant urges the Court to decide that the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Respectfully submitted,

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APPENDIX A

Affirmed, and Opinion filed October 29, 1975,
Associate Justice Brown not participating.

NO. 1227

FREDERICK P. ADAMS, *Appellant*

v.

HARRIS COUNTY, TEXAS, *Appellee*

530 S.W.2d 606

Appeal from 55th District Court
of Harris County

Appellant Frederick Adams was injured on March 26, 1967 while riding a motorcycle on a drawbridge operated by Harris County across Cedar Bayou. He sued the county in federal district court, claiming federal maritime jurisdiction. By order of the United States Court of Appeals for the Fifth Circuit, the cause was dismissed for want of federal jurisdiction. Adams v. Harris County, 452 F.2d 994 (5th Cir. 1971), *cert. denied,* 406 U.S. 968 (1972). Appellant also obtained permission of the Texas Legislature to sue the county in the state courts and brought this action in the 55th District Court of Harris County. The county moved for summary judgment on on the basis that it has governmental immunity from liability for its torts, and those of its agents, which occurred prior to the effective date of the Tort Claims Act, TEX. REV. CIV. STAT. ANN. art. 6252-19 (1970). The trial court granted summary judgment, from which Adams appeals, asserting that, for various reasons, the doctrine of governmental immunity should not be applied

in this case, and also that the doctrine violates the 14th Amendment of the United States Constitution.

The legislative resolution granting appellant permission to bring this action waives the county's immunity to suit and grants jurisdiction specifically to the courts of Harris County. The resolution reserves all "defense[s] of fact or law, that may be asserted by, or available to Harris County . . . ." House Concurrent Resolution No. 10, 61st Legislature (August 28, 1969). Appellant contends that governmental immunity from liability is not a "defense" as contemplated by this language, but is, rather, part of the "totality" of governmental immunity which has been waived in this case by the legislature. The weight of authority in Texas holds the government's immunity from suit is independent from its immunity from liability. Missouri Pacific R.R. v. Brownsville Nav. Dist., 453 S.W.2d 812, 813 (Tex. Sup. 1970); Childs v. Greenville Hospital Authority, 479 S.W.2d 399 (Tex. Civ. App. — Texarkana 1972, writ ref'd n.r.e.). Legislation authorizing suits against the state is to be strictly construed against interpretation as an admission of liability. Buchanan v. State, 89 S.W.2d 239 (Tex. Civ. App. — Amarillo 1936, writ ref'd). Indeed, while the state may waive immunity from suit, it may not waive its immunity from liability by means of special legislation for the benefit of a particular party, thus denying all citizens the equal protection of the law as guaranteed by the Texas Constitution. Martin v. Sheppard, 201 S.W.2d 810, 812 (Tex. Sup. 1947); State Highway Dept. v. Gorham, 162 S.W.2d 934, 937 (Tex. Sup. 1942).

Appellant urges that, even if the legislature has not waived the county's immunity from liability, immunity is not effective in this case because the function of operating a drawbridge is proprietary rather than governmental, and because appellant has alleged negligence on the part of the county itself in hiring an incompetent operator. The supreme court has held, however, that the distinction between proprietary and governmental functions does not apply to counties, Bennett v. Brown County Water Imp. Dist. No. 1, 272 S.W.2d 498 (Tex. Sup. 1954), and that an allegation of negligence in hiring does not circumvent the government's immunity from liability for the torts of its agents and officers. City of Dallas v. Smith, 107 S.W.2d 872, 879 (Tex. Sup. 1937).

Appellant further alleges that appellee may not benefit from its governmental immunity in this suit because its ownership and operation of the drawbridge falls within federal regulation by virtue of the federal statute prescribing standards of care for drawbridge operations, 33 U.S.C., § 499 (1970):

> It shall be the duty of all persons owning, operating, and tending the drawbridges built prior to August 18, 1894, or which may thereafter be built across the navigable rivers and other waters of the United States, to open, or cause to be opened, the draws of such bridges under such rules and regulations as in the opinion of the Secretary of Transportation the public interests require to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law. Every such person who shall willfully fail or refuse to open, or cause to be opened, the draw of any such bridge for the passage of a boat or boats, or who shall unreasonably delay the opening of said draw after reasonable signal shall have been given, as provided in such regulations, shall be deemed guilty of a misdemeanor, and on con-

viction thereof shall be punished by a fine of not more than $2,000 nor less than $1,000, or by imprisonment (in the case of a natural person) for not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

In finding no federal jurisdiction in this case the Court of Appeals for the Fifth Circuit determined that federal jurisdiction extends to the ope ..ion of drawbridges only where there is an accident caused by or involving a vessel on navigable waters. The court found appellant's injuries were "in no way caused by a vessel on navigable water. [T]he injuries in question occurred on a permanently fixed extension of land and in the absence of any maritime causation other than the approach of a vessel, without more." Adams v. Harris County, 452 F.2d 994, 997 (5th Cir. 1971), *cert. denied,* 406 U.S. 968 (1972). In the opinion of the Fifth Circuit, then, there is no "federally created cause of action" in this case.

Appellant's final contention is that the rule of sovereign immunity should be discarded by the Texas courts, at least in this case This court has refused to do so in the past; such a sweeping and fundamental change should be made, if at all, by the supreme court or the legislature.

Calhoun v. Pasadena Independent School District, 496 S.W.2d 131 (Tex. Civ. App. — Houston [14th Dist.] 1973, writ ref'd n.r.e.). *See also* Jones v. City of Dallas, 451 S.W.2d 271 (Tex. Civ. App. — Dallas 1970, writ ref'd n.r.e.).

The appellant's points of error are overruled. The judgment of the trial court is affirmed.

Affirmed.

/s/ BERT H. TUNKS
Chief Justice

Judgment rendered, and Opinion filed October 29, 1975.

JUDGMENT

NO. 1227

FREDERICK P. ADAMS

v.

HARRIS COUNTY, TEXAS

"This cause, being an appeal from the judgment rendered and entered by the court below on April 16, 1975, came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this Court that there is no error in the judgment, it is therefore considered, adjudged and ordered that the judgment of the court below be affirmed in all things. It is further ordered that the appellant, Frederick P. Adams, and his surety, Fidelity & Deposit Company of Maryland, pay all costs incurred by reason of this appeal. It is further ordered that this decision be certified below for observance."

APPENDIX B

IN THE SUPREME COURT OF TEXAS

February 25, 1976.

No. B-5714

FREDERICK P. ADAMS

vs.

HARRIS COUNTY, TEXAS

From Harris County,
Fourteenth District.

Application of petitioner for writ of error to the Court of Civil Appeals for the Fourteenth Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicant, Frederick P. Adams, and surety, Fidelity and Deposit Company of Maryland, pay all costs incurred on this application.

March 24, 1976.

No. B-5714

FREDERICK P. ADAMS

vs.

HARRIS COUNTY, TEXAS

From Harris County,
Fourteenth District.

Petitioner's motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

I, GARSON R. JACKSON, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand and seal of the Supreme Court of Texas, at the City of Austin, this, the 7th day of April, 1976.

/s/ GARSON R. JACKSON
Garson R. Jackson, Clerk

By ..... , Deputy.

APPENDIX C

Tex. Rev. Civ. Stat. Ann. Art. 6252-19. Tort claims

Short title

Section 1. This Act shall be known and cited as the Texas Tort Claims Act.

Definitions

Sec. 2. The following words and phrases as used in this Act unless a different meaning is plainly required by the context shall have the following meanings:

(1) "Unit of government" or "units of government" shall mean the State of Texas and all of the several agencies of government which collectively constitute the government of the State of Texas, specifically including, but not to the exclusion of, other agencies bearing different designations, all departments, bureaus, boards, commissions, offices, agencies, councils and courts; all political subdivisions, all cities, counties, school districts, levee improvement districts, drainage districts, irrigation districts, water improvement districts, water control and improvement districts, water control and preservation districts, fresh water supply districts, navigation districts, conservation and reclamation districts, soil conservation districts, river authorities, and junior college districts; and all institutions, agencies and organs of government whose status and authority is derived either from the Constitution of the State of Texas or from laws passed by the Legislature pursuant to such Constitution. Provided, however, no new unit or units of government are hereby created.

(2) "Scope of employment" or "scope of office" shall mean that the officer, agent or employee was acting on behalf of a governmental unit in the performance of the duties of his office or employment or was in or about the performance of tasks lawfully assigned to him by competent authority.

(3) "Officer, agent or employee" shall mean every person who is in the paid service of any unit of government by competent authority, whether full or part-time, whether elective or appointive, and whether supervisory or nonsupervisory, it being the intent of the Legislature that this Act should apply to every person in such service of a unit of government, save and except as herein provided. Such definition, however, shall not include an independent contractor or an agent or employee of an independent contractor, or any person performing tasks the details of which the unit of government does not have the legal right to control.

Liability of governmental units

Sec. 3. Each unit of government in the state shall be liable for money damages for property damage or personal injuries or death when proximately caused by the negligence or wrongful act or omission of any officer or employee acting within the scope of his employment or office arising from the operation or use of a motor-driven vehicle and motor-driven equipment, other than motor-driven equipment used in connection with the operation of floodgates or water release equipment by river authorities created under the laws of this state, under circumstances where such officer or employee would be personally liable to the claimant in accordance with the law of this state, or death or personal injuries so caused from some condi-

tion or some use of tangible property, real or personal, under circumstances where such unit of government, if a private person, would be liable to the claimant in accordance with the law of this state. Such liability is subject to the exceptions contained herein, and it shall not extend to punitive or exemplary damages. Liability hereunder shall be limited to $100,000 per person and $300,000 for any single occurrence for bodily injury or death and to $10,0000 for any single occurrence for injury to or destruction of property.

(Sec. 3 amended by Acts 1973, 63rd Leg., p. 77, ch. 50, § 1, eff. Aug. 27, 1973.)

Waiver of sovereign immunity

Sec. 4. To the extent of such liability created by Section 3, immunity of the sovereign to suit, as heretofore recognized and practiced in the State of Texas with reference to units of government, is hereby expressly waived and abolished, and permission is hereby granted by the Legislature to all claimants to bring suit against the State of Texas, or any and all other units of government covered by this Act, for all claims arising hereunder.

Venue

Sec. 5. All cases arising under the provisions of this Act shall be instituted in the county in which the cause of action or a part thereof arises.

Cumulative remedy

Sec. 6. This Act shall be cumulative in its legal effect and not in lieu of any and all other legal remedies which the injured person may pursue.

Laws and rules applicable

Sec. 7. The laws and statutes of the State of Texas and the Rules of Civil Procedure, as promulgated and adopted by the Supreme Court of Texas, insofar as applicable and to the extent that such rules are not inconsistent with the provisions of this Act, shall apply to and govern all actions brought under the provisions of this Act.

Unit of government as defendant; service of citation

Sec. 8. Suits instituted pursuant to the provisions of this Act shall name as defendant the unit of government against which liability is sought to be established. In suits against the state citation shall be served on the Secretary of State. In suits against other units of government citation shall be served in the manner prescribed by law for other civil cases. If no method is prescribed by law, then service may be had on the administrative head of the unit of government being sued, if available, and if not, the Court in which the suit is pending may authorize service in such manner as may be calculated to afford the unit of government a fair opportunity to answer and defend the suit.

Counsel; insurance

Sec. 9. The Attorney General of Texas shall defend all actions brought under the provisions of this Act against any unit of government whose authority and jurisdiction is coextensive with the geographical limits of the State of Texas. All units of government whose area of jurisdiction is less than the entire State of Texas shall employ their own counsel in accordance with the organic act under which such unit of government is operating; provided, however, that all units of government are hereby expressly authorized to purchase policies of insurance providing

protection for such units of government, their officers, agents and employees against claims brought under the provisions of this Act, and when they have acquired such insurance, they are further authorized to relinquish to the company providing such insurance coverage the right to investigate, defend, compromise and settle any such claim. In the case of suits defended by the Attorney General, he may be fully assisted by counsel provided by insurance carrier. Neither the existence or amount of insurance shall ever be admissible in evidence in the trial of any case hereunder, nor shall the same be subject to discovery.

Compromise and settlement

Sec. 10. Any and all causes of action brought under the provisions of this Act may be settled and compromised by the unit of government involved when, in the judgment of the Governor, in the case of the state, and in the judgment of the governing body of the unit of government in other cases, such compromise would be to the best interests of such government. It is specifically provided, however, that such approval shall not be required in those instances where insurance has been procured under the provisions of Section 9 hereof.

Collection of judgments

Sec. 11. Judgments recovered against units of government pursuant to the provisions of this Act shall be enforced in the same manner and to the same extent as judgments are now enforced against such units of government under the statutes and law of Texas; and no additional methods of collecting judgments are granted by this Act. Provided, however, if the judgment is obtained against a unit of government that has procured a contract

or policy of liability or indemnity insurance protection, the holder of the judgment may use such methods of collecting said judgments as are provided by the policy or contract and statutes and laws of Texas to the extent of the limits of coverage provided therein. It is expressly provided, however, that judgments under this Act becoming final during any fiscal year need not be paid by such unit of government until the following fiscal year except to the extent that they may be payable by an insurance carrier. For the payment of any final judgment obtained under the provisions of this Act, a unit of government not fully covered by liability insurance is hereby authorized to levy an ad valorem tax, the rate of which, if found by the unit of government to be necessary, may exceed any legal limit otherwise applicable except as may be imposed by the Constitution of the State of Texas. In the event that judgments arising under the provisions of this Act become final against a unit of government in any one fiscal year in an aggregate amount, exclusive of insurance coverage, if any, in excess of one percent of the budgeted tax funds, exclusive of general obligation debt service requirements, of such unit of government for such fiscal year, then such unit of government may pay such judgments over a period of not more than five years in equal annual installments and shall pay interest on the unpaid balance at the rate provided by law.

Effect of judgment or settlement

Sec. 12. (a) The judgment or settlement in an action or claim under this Act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of a unit of government whose act or omission gave rise to the claim.

(b) The State or a political subdivision may not require any employee to purchase liability insurance as a condition of his employment where the State or political subdivision is insured by a policy of liability insurance.

Liberal construction

Sec. 13. The provisions of this Act shall be liberally construed to achieve the purposes hereof.

Exemptions

Sec. 14. The provisions of this Act shall not apply to:

(1) Any claim based upon an act or omission which occurred prior to the effective date of this Act.

(2) Any claim based upon an act or omission of the Legislature, or any member thereof acting in his official capacity, or to the legislative functions of any unit of government subject to the provisions hereof.

(3) Any claim based upon an act or omission of any of the courts of the State of Texas, or any member thereof acting in his official capacity, or to the judicial functions of any unit of government subject to the provisions hereof.

(4) Any claim based upon an act or omission of an officer, agent or employee of any unit of government in the execution of the lawful orders of any court.

(5) Any claim arising in connection with the assessment or collection of taxes by any unit of government.

(6) Any claim arising out of the activities of the National Guard, the State Militia, or the Texas State Guard, when on active duty pursuant to lawful orders of competent authority.

(7) Any claim based upon the failure of a unit of government to perform any act which said unit of government is not required by law to perform. If the law leaves the performance or nonperformance of an act to the discretion of the unit of government, its decision not to do the act, or its failure to make a decision thereon, shall not form the basis for a claim under this Act.

(8) Any claim arising out of the action of an officer, agent or employee while responding to emergency calls or reacting to emergency situations when such action is in compliance with the laws and ordinances applicable to emergency action.

(9) Any claim based on an injury or death connected with any act or omission arising out of civil disobedience, riot, insurrection or rebellion or arising out of the failure to provide, or the method of providing, police or fire protection.

(10) Any claim arising out of assault, battery, false imprisonment, or any other intentional tort including, but not limited to, disciplinary action by school authorities.

(11) Any claim based upon the theory of attractive nuisance.

(12) Any claim arising from the absence, condition, or malfunction of any traffic or road sign, signal, or warning device unless such absence, condition, or malfunction shall not be corrected by the governmental unit responsible within a reasonable time after notice, or any claim arising from the removal or destruction of such signs, signals or devices by third parties except on failure of the unit of government to correct the same within such reasonable time, after actual notice. Nothing herein shall give rise to liability arising from the failure of any unit of govern-

ment to initially place any of the above signs, signals, or devices when such failure is the result of discretionary actions of said governmental unit. The signs, signals and warning devices enumerated above are those used in connection with hazards normally connected with the use of the roadway, and this section shall not apply to the duty to warn of special defects such as excavations or roadway obstructions.

Individual immunity

Sec. 15. Notwithstanding any provision hereof, the individual immunity of public officers, agents or employees of government from tort claims for damages is hereby preserved to the extent and degree that such persons presently are immunized.

Notice of death or injury

Sec. 16. Except where there is actual notice on the part of the governmental unit that death has occurred or that the claimant has received some injury or that property of the claimant has been damaged, any person making a claim hereunder shall give notice of the same to the governmental unit against which such claim is made, reasonably describing the damage or injury claimed and the time, manner and place of the incident from which it arose, within six months from the date of the incident. Provided, however, except where there is such actual notice, charter and ordinance provisions of cities requiring notice within a charter period permitted by law are hereby expressly ratified and approved.

(Sec. 16 amended by Acts 1973, 63rd Leg., p. 77, ch. 50, § 2, eff. Aug. 27, 1973.)

Payment of claim against state supported college or university

Sec. 17. No claim or judgment against a state-supported senior college or university, under this Act, shall be payable except by a direct appropriation made by the Legislature for the purpose of satisfying claims and/or judgments, except in the event insurance has been acquired as provided in Section 9, in which case the claimant is entitled to payment to the extent of such coverage as in other cases.

Exclusions

Sec. 18. (a) This Act shall not apply to any proprietary function of a municipality. The term "motor-driven equipment" as used herein shall not be construed so as to include medical equipment, such as, but not limited to iron lungs, located in hospitals.

(b) As to premise defects, the unit of government shall owe to any claimant only the duty owed by private persons to a licensee on private property, unless payment has been made by the claimant for the use of the premises. Provided, however, that the limitation of duty contained in this subsection shall not apply to the duty to warn of special defects such as excavations or obstructions on highways, roads or streets, nor shall it apply to any such duty to warn of the absence, condition or malfunction of traffic signs, signals or warning devices as is required in Section 14(12) hereof.

Workmen's Compensation

Sec. 19. Any governmental unit carrying Workmen's Compensation Insurance or accepting the provisions of

the Workmen's Compensation Act of the State of Texas shall be entitled to all of the privileges and immunities granted by the Workmen's Compensation Act of the State of Texas to private persons and corporations.

Application to school and junior college districts

Sec. 19A. The provisions of this Act shall not apply to school districts or to junior college districts except as to motor vehicles.

(Sec. 19A amended by Acts 1971, 62nd Leg., p. 1743, ch. 509, § 1, eff. Aug. 30, 1971.)

Repealer

Sec. 20. All laws or parts of law, and all enactments, rules and regulations or any and all units of government, and all organic laws of such units of government, in conflict herewith are hereby repealed, annulled and voided, to the extent of such conflict.

Severability

Sec. 21. In the event any section, subsection, paragraph, sentence or clause of this Act shall be declared unconstitutional or void, the validity of the remainder of this Act shall not be affected or impaired thereby; and it is hereby declared to be the policy and intent of the Legislature to enact the valid portions of this Act, notwithstanding the invalid portions, if any.

Effective date

Sec. 22. This Act shall be effective from and after January 1, 1970.

Acts 1969, 61st Leg., p. 874, ch. 292, eff. Jan. 1, 1970.

APPENDIX D

Muskopf v. Corning Hospital District, 359 P.2d 457, 458, n.1 (Cal. 1961):

Sovereign immunity began with the personal prerogatives of the King of England. In the feudal structure the lord of the manor was not subject to suit in his own courts. 1 Pollack and Maitland, The History of English Law 518 (1909 ed.). The king, the highest feudal lord, enjoyed the same protection: no court was above him. 1 Pollack and Maitland, The History of English Law, supra, at pp. 512-517; 3 Holdsworth, History of English Law, 462 (1922 ed.). Before the sixteenth century this right of the king was purely personal. Watkins, The State as a Party Litigant 12 [Johns Hopkins University Studies in History and Political Science, Series XLV, No. 1 (1927)]. Only out of sixteenth century metaphysical concepts of the nature of the state did the king's personal prerogative become the sovereign immunity of the state. Watkins, The State as a Party Litigant, supra, at p. 11; see 4 Holdsworth, The History of English Law, supra, at pp. 190-197. There is some evidence that the original meaning of the pre-sixteenth century maxim — that the king can do no wrong — was merely that the king was not privileged to do wrong. Borehard, Governmental Responsibility in Tort, 34 Yale L.J. 1,2; Ehrlich, Proceedings Against the Crown (1216-1377) at pp. 42, 127 [Oxford Studies in Social and Legal History, Vol. VI (1921)].

The immunity operated more as a lack of jurisdiction in the king's courts than as a denial of total relief. There was jurisdiction, however, in the Court of Exchequer for equitable relief against the crown. " * * * the party ought

in this case to be relieved against the King, because the King is the fountain and head of justice and equity; and it shall not be presumed, that he will be defective in either. And it would derogate from the King's honour to imagine, that what is equity against a common person should not be equity against him." Per Atkyns, B., Pawlett v. The Attorney General (1668), Hadres 465, 468, 145 Eng. Rep. 550, 552; Dyson v. Attorney General (1912), 1 K.B. 410, 415.

The method for obtaining legal relief against the crown was the petition of right. The action could not be brought in the king's courts because of their lack of jurisdiction to hear claims against him. The petition of right stated a claim against the king, which was barred only by his prerogative. To the petition "there must always be a reply: 'Let right be done,'" (Holdsworth, The History of Remedies Against The Crown, 38 L.Quar.Rev. 141, 149) and " * * * it is clear that the petition had assumed the character of a definite legal remedy against the Crown." (Id. at 150.) There were procedural difficulties with the petition, but alternate remedies existed in large part. Id. at 156-161.

The main use of the petition of right in the early common law was in real actions, which then covered a wide field, Holdsworth, Remedies Against The Crown, supra, at 152. The basic principle was that the petition was proper "whenever the subject could show a legal right to redress." Id. at 156.

The early precedents may even be read as allowing a petition of right against the king for the torts of his servants. See the cases of Robert (1325) and Gervais (1349) de Clifton, discussed in Ehrlich, Proceedings

Against the Crown, supra, at 123-126; Watkins, The State as a Party Litigant, supra, at 20 n. 36. In Tobin v. The Queen (1864), 16 C.B.N.S. 309, 111 Eng. Com. Law Rep. 309, however, the court refused to so read the precedents, and held that the crown was not liable for the torts of its servants. This decision arose because of the formalistic and mistaken idea that concepts of vicarious liability did not apply to the crown. See Holdsworth, Remedies Against The Crown, supra, at 294-296; Watkins, The State as a Party Litigant, supra, at 25. Under the Crown Proceedings Act, 1947, however, the crown is today liable for the torts of its servants to the same extent as private persons. Hals. Laws of England Vol. XXXII, §§ 253A, B (Cum. Sup. 1953).

One other protection was afforded the subject injured by the king's servants. Many of the king's officers were liable for the wrongs committed, and from the earliest times those officers had to have a sufficient financial standing to make those remedies against them meaningful. See Ehrlich, Proceedings Against The Crown, supra, at 200,214.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. _____

FREDERICK P. ADAMS, *Appellant*

v.

HARRIS COUNTY, TEXAS, *Appellee*

On Appeal From The Fourteenth Supreme Judicial District Of Texas

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I hereby certify that on the ____ day of June, 1976, a copy of this Statement of Jurisdiction was mailed, postage prepaid, to Joe Resweber, County Attorney for Harris County, Texas. I further certify that all parties required to be served have been served.

W. JAMES KRONZER
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